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15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 TPOV ENTERPRISES 16, LLC, a Delaware
18 Limited Liability Company,

19 Plaintiff,
20 vs.

21 PARIS LAS VEGAS OPERATING
22 COMPANY, LLC, a Nevada limited liability
23 company,

24 Defendant.

25 PARIS LAS VEGAS OPERATING
26 COMPANY, LLC, a Nevada limited liability
27 company,

28 Counterclaimant.
vs.

TPOV ENTERPRISES, LLC, a Delaware
Limited Liability Company, TPOV
ENTERPRISES 16, LLC, a Delaware Limited
Liability Company, ROWEN SEIBEL, an
individual.

Counter-defendants.

CASE NO. 2:17-cv-00346-JCM-VCF

**STIPULATION AND ORDER TO
EXTEND DISCOVERY (Third
Request)**

Plaintiff/Counterdefendants TPOV Enterprises 16, LLC ("TPOV 16"), TPOV Enterprises,
LLC ("TPOV"), and Rowen Seibel ("Seibel") and Defendant/Counterclaimant Paris Las Vegas
Operating Company, LLC ("Paris") by and through their undersigned counsel of record, request an

1 order modifying the parties' Joint Discovery Plan and Scheduling Order, (ECF No. 17), as amended
2 November 3, 2017 (ECF No. 47). This is the third stipulation to extend discovery. In compliance
3 with LR IA 6-1 and LR 26-4, the parties submit as follows:

4 **1. STATEMENT OF DISCOVERY COMPLETED TO DATE.**

- 5 • The parties both served their initial disclosures on June 12, 2017.
- 6 • Paris served its first supplemental disclosures on June 14, 2017.
- 7 • TPOV 16 served its first supplemental disclosures on June 20, 2017.
- 8 • On September 22, 2017, the parties exchanged proposed search terms for electronic
9 discovery.
- 10 • On October 4, 2017, the parties met and conferred on proposed search terms.
- 11 • On October 12, 2017, the parties exchanged revised search terms for electronic
12 discovery.
- 13 • On October 12, 2017, the parties met and conferred on revisions to the proposed
14 search terms.
- 15 • On October 23, 2017, TPOV 16 provided further revisions to search terms for
16 electronic discovery.
- 17 • On October 31, 2017, Paris represented to TPOV 16 that Paris would be proceeding
18 with running TPOV 16's search terms for electronic discovery and would present
19 preliminary results to TPOV 16 in the near future.
- 20 • On November 9, 2017 TPOV 16 served its First Set of Request for Production of
21 Documents on Paris.
- 22 • On December 4, 2017 TPOV 16 served its First Set of Interrogatories on Paris.
- 23 • On December 13, 2017, Paris served its Reponses to TPOV 16's First Set of Request
24 for Production of Documents.
- 25 • On January 9, 2017, Paris served its Responses to TPOV 16's First Set of
26 Interrogatories
- 27 • On January 16, 2018, TPOV 16 issued a subpoena to third-party Trisha Thompson.
- 28 • On January 16, 2018, TPOV 16 issued a subpoena to third-party Markita Thompson.

- On February 1, 2018, Trisha Thompson served her objections to TPOV 16's subpoena.
- On February 1, 2018, Markita Thompson served her objections to TPOV 16's subpoena.
- On February 9, 2018, Paris requested additional revisions to the proposed search terms due to the volume of results.
- On February 12, 2018, TPOV 16 provided further revisions to search terms for electronic discovery.
- On February 22, 2018, Paris proposed categories of documents to respond to TPOV 16's discovery requests.
- On February 28, 2018, Paris served its First Set of Requests for Production of Documents to Seibel.
- On February 28, 2018, Paris served its First Set of Requests for Production of Documents to TPOV.
- On February 28, 2018, Paris served its First Set of Requests for Production of Documents to TPOV 16.
- On March 2, 2018, TPOV 16 agreed to Paris' proposed categories of documents to respond to TPOV 16's discovery requests.
- On April 3, 2018, TPOV served its Response to Paris' First Set of Requests for Production of Documents.
- On April 3, 2018, TPOV 16 served its Response to Paris' First Set of Requests for Production of Documents.
- On April 3, 2018, Seibel served his Response to Paris' First Set of Requests for Production of Documents.
- On April 4, 2018, TPOV 16 requested to provide categories of documents to respond to Paris' discovery requests.
- On April 4, 2018, Paris responded to TPOV 16's request regarding proposed categories of documents to respond to Paris' discovery requests.

1 • On April 6, 2018, TPOV and Seibel served their first production of documents.
2 • On May 4, 2018, Paris served its second supplemental disclosures.
3 • On May 7, 2018, Paris served its First Supplemental Responses to TPOV 16's First
4 Set of Interrogatories.

5 **2. SPECIFIC DESCRIPTION OF DISCOVERY THAT REMAINS TO BE**
6 **COMPLETED.**

7 The parties anticipate completing the production of documents, propounding and
8 responding to additional requests for production, interrogatories, and requests for admissions,
9 conducting depositions, engaging in expert discovery, and conducting third-party document and
10 deposition discovery. Additionally, the parties are at an impasse on certain requests for discovery
11 and anticipate motion practice to resolve the dispute.

12 **3. DISCOVERY REMAINING CANNOT BE COMPLETED WITHIN THE TIME**
13 **LIMITS SET BY THE DISCOVERY PLAN.**¹

14 Initially, the parties have agreed to extend the discovery cut-off deadline because a stay
15 order was in place from the outset of the action. (ECF No. 23.) In particular, this Court's order
16 provided for a stay of all discovery except initial disclosures and jurisdictional discovery. The stay
17 was lifted on July 5, 2017, when the Court ruled on Paris' Motion to Dismiss. (ECF No. 30.) Since
18 the stay was lifted, the parties entered into a Stipulated Protocol Governing Production of
19 Electronically Stored Informed (ESI) and a Stipulated Confidentiality Agreement and Protective
20 Order. (*See* ECF No. 26 and ECF No. 29.) Additionally, the parties have further exchanged search
21 terms, begun rolling productions of supplemental documents, served written discovery, and begun
22 discussing depositions. Through these discussions, the parties have determined that more time than
23 originally anticipated is necessary to complete discovery. The current July 9, 2018 discovery cut-
24 off does not provide sufficient time for the parties to engage in and complete discovery. An

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27 ¹ On April 4, 2018, Paris filed a Motion to Stay this action pending resolution of a parallel
28 state court action. (ECF No. 49.) This stipulation is independent of and unrelated to the Motion to
Stay as the parties intend continue conducting discovery until the Court issues a decision on that
Motion.

1 extension of the discovery cut-off date to January 9, 2019 will provide both parties with the time
2 needed to conduct and complete discovery.

3 **4. PROPOSED SCHEDULE FOR COMPLETING REMAINING DISCOVERY.**

4 The parties have agreed to a discovery cut-off date of January 9, 2019 with corresponding
5 deadlines as follows:

	Current Deadline Date	Proposed Deadline Date
7	Discovery Cut-off	July 9, 2018
8	Amend Pleadings/Add Parties	April 10, 2018
9	Expert Disclosures	May 10, 2018
10	Rebuttal Expert Disclosures	June 11, 2018
11	Dispositive Motions	August 8, 2018
12	Interim Status Report	May 10, 2018
13	Pre-Trial Order	September 7, 2018
		January 9, 2019
		No Change
		November 13, 2018
		December 11, 2018
		February 8, 2019
		November 13, 2018
		March 7, 2019

14 If dispositive motions are filed, the joint pretrial order shall be due thirty (30) days from the
15 entry of the court's rulings on the motions or by further order of the court. *See LR 26-1(b)(5).*

16 **5. GOOD CAUSE EXISTS TO EXTEND TIME TO COMPLETE DISCOVERY.**

17 A stipulation to extend discovery deadlines must be supported by a showing of good cause.
18 LR 26-4; *Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 764 (9th Cir. 2017). "The
19 good cause inquiry focuses primarily on the [parties'] diligence." *Derosa v. Blood Sys., Inc.*, No.
20 2:13-CV-0137-JCM-NJK, 2013 WL 3975764, at *1 (D. Nev. Aug. 1, 2013) (citation omitted). If,
21 despite the parties' diligence, discovery cannot reasonably be completed within the deadlines, good
22 cause to extend discovery exists. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.
23 2002). Where an extension is requested less than twenty-one (21) days before expiration of a
24 deadline, a showing of excusable neglect must be made. LR 26-4; *Derosa*, 2013 WL 3975764, at
25 *1. "[W]hether neglect is excusable is an equitable [question] that depends on at least four factors:
26 (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact
27 on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith."
28 If dispositive motions are filed, the deadline for filing the joint pretrial order will be suspended until 30 days after decision on the dispositive motions or further court order.

1 *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223–24 (9th Cir. 2000); *Derosa*, 2013 WL 3975764,
2 at *1 (applying Rule 60(b)(1)'s definition of excusable neglect to LR 26-4).

3 The parties have been diligent in pursuing discovery. As stated above, a stay order
4 prohibited the parties from doing all but producing initial disclosures and engaging in jurisdictional
5 discovery. Since the stay was lifted and the previous scheduling order was entered, the parties have
6 agreed to the form of production for ESI, refined specific search terms in furtherance of ESI
7 production, served thousands of pages of documents, propounded to and responded to written
8 discovery, and engaged in meet and confers regarding certain discovery disputes. Despite the
9 diligence of all parties, the parties have determined that more time than originally anticipated is
10 necessary for discovery. Indeed, despite the parties' diligence, discovery cannot reasonably be
11 completed within the deadlines, and good cause to extend discovery deadlines exists.

12 Any neglect assigned to the parties is excusable. First, there is no danger of prejudice. Both
13 parties agree that it is in their best interests to extend discovery deadlines. Second, the length of
14 the delay will not substantively impact the proceedings as the parties have been and continue to
15 actively conduct discovery. Third, the parties' delay in submitting the stipulation is excusable. The
16 parties have been engaged in motion practice in a related case pending before the Eighth Judicial
17 District Court, including the briefing of a motion to dismiss and Paris and its related parties
18 opposing multiple motions to dismiss in that proceeding, which were resolved on May 1, 2018.
19 Finally, the parties have acted in good faith. The parties met and conferred regarding an extension
20 to the deadlines and intended to submit a stipulation following the resolution of the motions being
21 addressed in the Eighth Judicial District Court.

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1 This proposed Stipulation and Order to extend deadlines for discovery is made in good faith,
2 with good cause, and not for purposes of unduly delaying discovery or trial. In light of the stay
3 order, the voluminous number of documents to be reviewed as a result of the exchanged search
4 terms, and the simultaneous motion practice in related proceedings, extension of the discovery
5 deadlines is warranted. Therefore, the parties respectfully request that this Court grant the requested
6 discovery extension.

7 DATED this 10th day of May 2018.

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DATED this 10th day of May 2018.

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ORDER

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IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE

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DATED: May 10, 2018

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